

In the Matter of )  
 )  
T-Mobile USA Inc. )  
 )  
Objection to Proposed Wireless Tower )  
Syracuse, New York )

<sup>5</sup> See Opposition at 1-3.

Historic Preservation Act (NHPA)<sup>7</sup> and the rules of the Advisory Council on Historic Preservation (Advisory Council)<sup>8</sup> for a proposed 80-foot stealth flagpole tower to be located at 1001 Comstock Avenue, Syracuse, New York.<sup>9</sup> T-Mobile then entered discussions with the NYSHPO, the Syracuse Landmark Preservation Board, and the Syracuse Board of Zoning Appeals (Zoning Board) to address the effects of the facility on historic preservation.<sup>10</sup> The Zoning Board also held a public hearing on T-Mobile's application for the proposed facility.<sup>11</sup> As a result of this process, T-Mobile agreed to reduce the height from 80 feet to 60 feet, paint the tower, relocate the tower behind a 19<sup>th</sup> century crematorium, and not install a flag or a light on the pole.<sup>12</sup> Based on T-Mobile's agreement to modify the proposed facility and the NYSHPO's review of the Section 106 documentation and comments received from the public, including SEUNA, the NYSHPO recommended to the Commission on March 16, 2004, that the proposed facility, as modified, would have no adverse effect on properties, listed or eligible for listing on the National Register of Historic Places (historic properties).<sup>13</sup>

3. On November 30, 2003, Mr. Oldfield and SEUNA filed an informal complaint with the Division, asserting that the proposed facility would have an adverse effect on the Morningside cemetery and its mausoleum/crematorium.<sup>14</sup> On June 4, 2004, Mr. Oldfield filed a letter affirming that the proposal as modified would continue to have an adverse effect.<sup>15</sup> On October 26, 2004, after reviewing the NYSHPO's recommendation and the record, the Division issued a letter denying the informal complaint and concurring with the NYSHPO that the proposed tower would have no adverse effect on historic properties.<sup>16</sup> T-Mobile constructed the facility after the Division denied the informal complaint.

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<sup>6</sup> 47 C.F.R. § 1.1307(a)(4).

<sup>7</sup> See 16 U.S.C. § 470f.

<sup>8</sup> 36 C.F.R. Part 800.

<sup>9</sup> See Opposition at 1-2. We note that effective March 7, 2005, the Commission amended Section 1.1307(a)(4) of its rules to incorporate a Nationwide Programmatic Agreement (NPA) governing Section 106 review. See Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, 20 FCC Rcd 1073 (2004). Because this tower was reviewed by the NYSHPO prior to the NPA, the NPA does not apply to this proceeding.

<sup>10</sup> See Opposition at 2-3.

<sup>11</sup> *Id.*

<sup>12</sup> See Opposition at 3.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> See Letter from John Oldfield to Dan Abeyta, Esq., Wireless Telecommunication Bureau, Spectrum and Competition Policy Division, dated November 30, 2003.

<sup>15</sup> See Letter from John Oldfield to Dan Abeyta, Esq., Spectrum and Competition Policy Division, dated June 4, 2004.

<sup>16</sup> See Division Letter.

4. The application for review alleges that the Division erred when it concurred with the NYSHPO that the proposed facility would have no adverse effect on historic properties.<sup>17</sup> In addition, SEUNA asserts that T-Mobile failed to evaluate alternative sites.<sup>18</sup> SEUNA further alleges that T-Mobile is required to file an Environmental Impact Statement (EIS) for the proposed facility.<sup>19</sup> Finally, SEUNA requests that the Commission withdraw its operating permit for this facility.<sup>20</sup>

5. In its Opposition, T-Mobile indicates that SEUNA was given consulting party status on December 1, 2003, by the NYSHPO, and fully participated in the NYSHPO's Section 106 review process for the proposed facility.<sup>21</sup> T-Mobile also describes how it evaluated several alternative locations in the siting process.<sup>22</sup> Finally, with respect to SEUNA's argument that T-Mobile was required to file an EIS with the Commission, T-Mobile states that neither an Environmental Assessment (EA) nor an EIS was required by the Commission's rules because, as borne out by the NYSHPO's recommendation, the proposed facility would have no adverse effect on historic properties.<sup>23</sup>

6. SEUNA presents no arguments in its Application for Review that would lead us to change the Division's action. SEUNA merely repeats arguments that were addressed and rejected by the Division when it concurred with the NYSHPO that there would be no adverse effect to historic properties from the proposed T-Mobile tower. We agree with T-Mobile that no EA or EIS was required. T-Mobile constructed the tower in accordance with the Commission's rules implementing Section 106 of the NHPA and the rules of the Advisory Council. Therefore, we disagree with SEUNA's argument that the Commission should withdraw T-Mobile's operating permit for this facility. Accordingly, we agree with the Division's action denying the informal complaint.

7. ACCORDINGLY, IT IS ORDERED, pursuant to Section 5(c)(5) of the Communications Act, as amended, 47 U.S.C. § 155(c)(5), and Sections 1.115(g), 1.1306, and 1.1307(a)(4) of the Commission's rules, 47 C.F.R. §§ 1.115(g), 1.1306, and 1.1307(a)(4), that the Application for Review filed by the South East University Neighborhood Association IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>17</sup> See Application at 2.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> *Id.* at 4. See 47 C.F.R. § 1.1305 (EIS is required for any Commission action deemed to have a significant effect on the quality of the human environment).

<sup>20</sup> See Application at 5.

<sup>21</sup> See Opposition at 4-5; see also 36 C.F.R. Part 800.2(c).

<sup>22</sup> *Id.* at 2-3.

<sup>23</sup> *Id.* at 4.